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THE YOUNG OFFENDERS ACT

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THE YOUNG OFFENDERS ACT*

ISSUE DEFINITION

With the coming into force of the *Young Offenders Act* (the "YOA"), Canada's treatment of criminal activity by adolescents underwent a marked change. The YOA replaced the *Juvenile Delinquents Act* (the "JDA"), first enacted in 1908, which exemplified what has been described as the "welfare" model of dealing with young offenders. That is to say, youth were not to be treated as criminals but, rather, in the words of the Act, as "misdirected [children]... in need of aid, encouragement, help and assistance." Informality and flexibility were the hallmarks of the JDA - the aim was to mitigate the strict application of the criminal justice system in such a way as to permit social intervention to "save" the child. The unintended results, however, were often arbitrariness, unfairness, and neglect of the interests of youth, consequences of the discontinuity between the ideals expressed in the JDA, and the actual delivery of services to juveniles. Moreover, juvenile delinquents were denied basic elements of due process: such things as a clear right to counsel, rights of appeal, and definite, as opposed to open-ended, sentences.

The YOA adopts what is known as the "justice" model of juvenile criminal justice. Such a model continues to recognize the special needs and the vulnerability of youth, but also places emphasis on both protection of the public, and the rights of young people. The result is a considerably more detailed and explicit code governing criminal proceedings against youth. The emphasis is less on social intervention, and more on the delineation of rights and obligations.

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BACKGROUND AND ANALYSIS

A. Jurisdiction

The YOA is, on the whole, a procedural rather than a substantive statute. That is to say, it does not set out a *Criminal Code* of offences for young people. Rather, it stipulates the procedures which must be followed in dealing with adolescent criminality. It applies to all "young persons" between 12 and 18 years of age. In contrast, the JDA could be invoked against any child over 7 years of age, and, depending on the province involved, either under 16 or under 18. When the YOA was proclaimed in force in April 1984, the provinces were permitted to continue to designate a maximum age of 16 or 17 for a short time, in order to allow them to adapt to the new system, but in April 1985, the maximum age of 18 became uniform across Canada.

Under the JDA the range of conduct for which a youth could be prosecuted was very broad. A "juvenile delinquent" was any young person who violated the *Criminal Code* or any other federal or provincial statute or municipal by-law, or who participated in "sexual immorality or any similar form of vice." The YOA is considerably more limited and precise - it applies only to offences created by federal statutes, or by any regulations, rules, orders, by-laws or ordinances made thereunder (except Territorial ordinances).

Young offenders are to be tried by "youth courts," courts designated by the government of a province (or, in the Territories, the Governor in Council) to deal with adolescents. Such courts have jurisdiction where an offence is committed by someone while he or she is a young person. As did the JDA, the YOA does make provision for the transfer of a case to adult court, on the application of the relevant Attorney General, or of the young person, where such is "in the interest of society" having regard to "the needs of the young person." Such transfers can occur only with respect to serious indictable offences (such as murder), and can take place only where the person is alleged to have committed the offence after having reached 14 years of age. Unlike the JDA, which left the transfer decision largely to the discretion of the presiding judge, the YOA sets out a detailed list of criteria which the court must take into consideration before ordering a transfer (s. 16). In legislation passed by Parliament in June 1986 (Bill C-106), s. 16 was amended to require a youth court to inquire whether either party wishes to make a transfer

application, before making an adjudication. This amendment was made, it appears, to remedy the problem caused by precipitate guilty pleas made to avoid transfers, or to deal with cases in which the parties have not given consideration to a transfer.

Bill C-37 in 1995 significantly amended section 16. Under these amendments, 16 and 17-year-olds charged with murder, attempted murder, manslaughter or aggravated sexual assault are presumptively dealt with in adult court. If, on application, the Youth Court is satisfied that the goals of rehabilitation and public protection could be reconciled if the young person were under the jurisdiction of the Youth Court, it may order that a case be dealt with there.

The age limits stipulated in the YOA have become controversial. Some police forces, in particular, contend that they are virtually powerless to deal with criminal acts by children under 12 and over 7. The federal government maintains that the provinces have the power to treat such children pursuant to their jurisdiction over child welfare. Some provinces have also been slow to accommodate themselves to the new upper age limit of 18. Ontario, for example, which had recognized an age limit of 16 under the JDA, continues to prosecute young offenders between 16 and 18 in provincial criminal courts (as opposed to family court for those under 16) and places those between 16 and 18 who are convicted under the jurisdiction of the Ministry of Correctional Services (as opposed to the Ministry of Community and Social Services for those under 16).

B. Principles of the Act

The YOA integrates into its substantive content a "declaration of principle" which serves as a guide to interpretation and application of the Act. Ten statements of policy are found in s. 3. First, young persons are said not to be as accountable for their acts as are adults, but even so they must "bear responsibility for their contraventions." Second, society must be afforded protection from illegal behaviour, although it does have a responsibility to take measures to prevent criminal conduct by youth. The third statement recognizes the need for supervision, discipline and control of young offenders, but also that they have "special needs" and require guidance and assistance. Fourth, the taking of measures other than judicial proceedings should be considered where not "inconsistent with the protection of society." The fifth statement recognizes the legal and constitutional rights of youth. Sixth, youth have a right to the least possible interference with

freedom as is consistent with public safety. Pursuant to the seventh statement, they have the right to be informed of their rights and freedoms in any situation where those rights and freedoms may be infringed. Parents are said to have a responsibility for the care and supervision of their children, and children are to be removed from parents only in compelling circumstances. Bill C-37 in 1995 added two principles to the original right. The first of these espoused a multidisciplinary approach to crime prevention while the second asserted that the protection of society is best served by the rehabilitation of young persons.

A notable aspect of these statements of policy is the emphasis on protection of society, and on the rights of young persons. These clearly indicate the approach of the YOA. As for their use as an interpretive tool, both youth and appellate courts have made reference to section 3 in dealing with such things as sentencing and transfer applications.

C. Alternative Measures

Section 4 of the Act gives substance to the fourth statement of principle in s. 3 - that non-judicial procedures should be considered in many instances. It provides legislative authority for the use of voluntary "alternative measures," or what is known as "diversion" - the decision not to prosecute a young person, but rather have him or her participate in some educational or community service program. The intention is to avoid the formal, time-consuming, and often harmful effects of prosecution and punishment.

A number of pre-conditions must be met before a youth can be diverted from the courts, however. A program of alternative measures must have been authorized by the relevant Attorney General, his delegate, or a person authorized by the Lieutenant Governor in Council of a province. The young person must "accept responsibility" for the offence alleged, and he or she must consent to participation. There must exist a solid basis for a prosecution. Section 4 preserves the right of any person to prosecute privately, but not in circumstances where a young person has completed prescribed alternative measures.

The formalization of diversion had a slow start. All provinces but Ontario introduced such programs. Following a 17 March 1988 decision of the Ontario Court of Appeal that the failure to provide for alternative measures was in violation of s. 15 of the *Charter of Rights*

and Freedoms (equality rights), the Government of Ontario announced on 24 March 1988 that it would implement "interim" alternative measures pending the outcome of an appeal to the Supreme Court of Canada. The Supreme Court of Canada on 28 June 1990 found that Ontario was not under a duty to establish alternative measures. The "interim" alternative measures were themselves found (on 8 July 1988, by King J. of the Ontario Provincial Court) to be in violation of Charter of Rights guaranteed equality rights. This decision, which the Attorney General of Ontario appealed to the Ontario Court of Appeal, was followed by some provincial court judges and not followed by others. The Ontario Court of Appeal in a December 1988 ruling held that the "interim" alternative measures were not in violation of s. 15 of the *Charter of Rights and Freedoms* (equality rights). On 28 June 1990, the Supreme Court of Canada in another case found that, because Ontario did not have a duty to establish alternative measures, the Court no longer had to deal with this issue.

Concern has been expressed about the fact that a youth must, in effect, admit guilt in order to take advantage of section 4. There is also a concern that this legislated form of alternative measures may be excluding more informal types of diversion, such as those exercised by the police at the arrest and apprehension stage.

D. Pre-Trial Matters

1. Detention and Interim Release

The YOA makes it clear that most of the arrest and bail provisions of the *Criminal Code* apply to proceedings against young persons. Under the JDA, there had been some doubt as to whether the detailed release provisions of Part XIV of the Code applied to juveniles. Until the passage of Bill C-106 in June 1986, the Act contained a virtually absolute rule that young persons were to be detained separately from adults. In view of the logistical problems this was causing to law enforcement officials, s. 7 was relaxed somewhat to permit mixed detention "under the supervision and control of a peace officer" for a period up to the first reasonable opportunity to place the young person in a special place of detention after his or her first appearance in court. The bill also relaxed the rule that justices could hear bail matters only if no youth court judge was reasonably available. The amendments permit justices to deal with bail without restrictions.

2. Notice to Parents

Consistent with the principle of parental responsibility, the YOA contains detailed provisions stipulating that parents must be notified where a young person is arrested or charged. "Parent" is defined to include any person who has a legal duty to provide for a young person, or who has custody and control of that young person. Pursuant to section 10, a parent can also be compelled to attend at youth court, on pain of conviction for contempt in default, if the court is of the opinion that such attendance is necessary or in the best interest of the young person.

3. Medical and Psychological Reports

Section 13 of the YOA sets out very detailed procedures governing the preparation and use of medical and psychological reports with respect to accused young persons. The JDA was largely silent on this issue, leaving a considerable amount of discretion to the courts. Section 13 deals with such things as: when a report can be ordered; the circumstances in which a young person can be detained for examination; restrictions on disclosure of the contents of a report, even to the young person in some circumstances; and the right to cross-examine the author of a report. Bill C-37 in 1995 amended section 13 to allow for such reports to be ordered in cases of serious personal injury offences or repeated findings of guilt.

E. The Trial

As was the case under the JDA, criminal proceedings involving a young person are summary in nature, whether or not the offence is expressed, in the *Criminal Code* or other Acts, as being indictable or punishable on summary conviction. This means that, even for indictable (i.e. serious) offences, there is no preliminary inquiry, and no availability of a trial by jury. The constitutionality of the denial of a jury trial to young persons has been challenged. Thus far, most courts have upheld the validity of the Act on this matter. The *Charter of Rights and Freedoms* guarantees a jury trial only where a person faces a possible punishment of five years' imprisonment "or a more severe punishment." The argument has been that, because the maximum possible custodial sentence under the Act is three years, the Charter guarantee must be read down, guaranteeing a jury trial in serious cases where three years can be considered "severe punishment."

The Act sets out a strict procedure for the commencement of proceedings, whereby the court must actually read out the information to the accused, and, where the accused is unrepresented, inform him or her of the right to counsel. Further, a youth court may not accept a guilty plea without first inquiring as to whether there are facts that support the charge. An adult court is under no obligation to make such an inquiry. In general, the procedures set out in the *Criminal Code* govern trials in youth courts, except where a contrary intention is found in the Act.

F. Evidence

1. Statements of Young Persons

The YOA in s. 56 deals explicitly with the reception into evidence of statements by young persons. It stipulates, as the general rule, the common law position that a statement will be received as evidence only if it is "voluntary"; i.e., that it has not been obtained either by fear of prejudice or hope of advantage held out by a "person in authority." But the section goes on to attach further conditions to the admissibility of statements. The person receiving the statement must explain to the young person "in language appropriate to his age and understanding": that the youth is not obliged to give a statement; that the statement can be used against him or her; that the youth has the right to consult with counsel, a parent or an adult relative; and that any statement may be made in the presence of the adult consulted. Further, the young person must have been given an opportunity to consult, and to make the statement in the presence of the adult consulted. These latter two rights may be waived, but such a waiver must be in writing. Bill C-106, as originally drafted, would have removed the necessity for this waiver to be in writing. This proposal met, however, with considerable opposition and was eventually deleted. Section 56 was amended, however, to stipulate that a parent or adult relative consulted by a young person is not a "person in authority" (whose offering of hope of advantage or fear of prejudice can vitiate the admissibility of a statement), in the absence of evidence to the contrary. Bill C-37 made a number of amendments to section 56 in order to deal with some of its "ambiguous" provisions.

An exception to most of the requirements is made with respect to "spontaneous" statements made to a police officer or other person in authority. But such statements must still be

voluntary. Statements made to persons who are not "in authority" are inadmissible if made under duress.

2. Testimony of Children and Young Persons

Until the coming into force of Bill C-106, the rules governing the testimonial capacity of children and young persons in proceedings under the YOA differed, in some respects, from the general law on such testimony. Under the general law (as embodied in s. 16 of the *Canada Evidence Act*) persons over 14 are presumed competent to give evidence. If a witness is under 14, the Court must inquire into whether or not he or she understands the nature of an oath. If the person is held to understand the nature of an oath, his or her evidence is admissible without the need for corroboration, although the judge must warn the trier of fact as to the potential unreliability of such evidence. Unsworn evidence may be received if the child is deemed sufficiently intelligent and understands the "duty of speaking the truth." Such evidence, until recently, had to be corroborated.

Original s. 61 of the YOA was both more and less restrictive than the general law. It was more restrictive in that it required corroboration of the evidence of all persons under 12 years of age, whereas under the general law it was possible for some children under 12 to give sworn evidence, which requires no corroboration. It was less restrictive in that it presumed all persons over 12 to have testimonial capacity, whereas the general law made that presumption only for persons over 14.

Bill C-106 repealed s. 61, thus making s. 16 of the *Canada Evidence Act* applicable to youth court proceedings. That part of s. 60 which requires a judge to instruct a child, and gives a judge a discretion to instruct a youth, as to the duty to tell the truth was retained by Bill C-106; but other elements of it which required all testimony of children and young persons to be given under solemn affirmation were deleted. Now, apparently, they may testify either under oath or under solemn affirmation.

The Badgley Committee (which dealt with sexual offences against children and youth) criticized the corroboration requirements. In its view, a witness's age should reflect only on the weight of his or her evidence, and not on its admissibility. The Government apparently agreed,

and Bill C-113 (given first reading in June 1986), proposed amending s. 16 of the *Canada Evidence Act* to delete the corroboration requirement, and to establish a procedure for determining the testimonial capacity of persons under 14. The bill also proposed removing a corroboration requirement related to children's evidence in the *Criminal Code* (s. 586). Although Bill C-113 died on the Order Paper when Parliament was prorogued in August 1986, Bill C-15, which received first reading on 29 October 1986, carried forward these provisions. Bill C-15 was passed by the House of Commons and the Senate, and given Royal Assent on 30 June 1987.

G. Sentencing (Dispositions)

It has been written that "the true magic of the juvenile court has always been in the dispositional [i.e. sentencing] stage" - the stage of proceedings where the court can give concrete form to the principles underlying the legislation. The YOA has introduced a number of reforms with respect to what it refers to as "dispositions." Almost all dispositions must now be fixed, and be of limited duration. This is particularly so with respect to custodial dispositions. In addition, there is provision for a wider range of dispositions (including discharges) as well as for periodic review, to evaluate their usefulness.

Section 20 of the Act allows for a number of possible dispositions: absolute discharge; a fine of up to $1,000; compensation for loss of or damage to property, or for loss of income or out-of-pocket expenses caused by personal injury; restitution to a victim; restitution to an innocent purchaser; personal services to the victim; community service; such prohibition, seizure, or forfeiture orders as are found in federal statutes; medical or other treatment; probation; custody; and the imposition of reasonable ancillary conditions on any other disposition. After holding a hearing with respect to sentence, the youth court may impose one or more of these dispositions, that are not inconsistent with each other. In any case where custody is considered, the court must have before it a "pre-disposition report" prepared by youth court workers as to the particular circumstances of the young person. Such a report is optional with respect to other dispositions. The JDA made no special provision for a hearing on sentencing, and was much less explicit on pre-sentence reports.

The dispositions in s. 20 form a hierarchy, each being, in general, successively more severe than the one previous. In accordance with s. 3, the court is to choose that disposition that interferes least with a young person's freedom, taking into account the need for protection of society.

No disposition may have a duration of more than two years, except for a prohibition, seizure or forfeiture order or a custodial sentence. Custody is reserved for serious offences, and as a last resort. It can either be "open" (i.e. in a community residential centre, group home, child care institution, or forest or wilderness camp), or "secure" (i.e. essentially, a jail). The general rule is that no custodial sentence can exceed two years, although a three-year custodial sentence may be imposed where an adult could be imprisoned for life for the offence. No person under 14 is to be committed to secure custody unless: the same offence committed by an adult would be punishable by imprisonment of five or more years, and the youth has previously been convicted of such an offence; or the offence is for prison breach or escape. A young person between 14 and 18 can be committed to secure custody only if: the offence is one for which an adult could be imprisoned for five or more years; the offence is prison breach or escape; or the young offender had previously been convicted of a serious offence or had been in secure custody. A young person held in custody must be kept separate and apart from any adult prisoners.

Bill C-37 in 1995 made a number of amendments to section 20. Prior to these amendments, the Act had imposed a maximum penalty of five years less a day for first or second degree murder, with a maximum of three years' incarceration and a maximum of two years spent under community supervision. This was changed to a ten-year maximum for first degree murder and a seven-year maximum for second degree murder. In the case of first degree murder, a maximum of six years was to be in incarceration while in the case of second degree murder a maximum of four years was to be served in custody.

Where the disposition is an order for medical or other treatment, the young person (as well as the hospital or other institution, and his or her parents) must consent. The consent of the parents can be dispensed with, but not that of the young person, or the institution. Where the disposition is for personal services to the victim, the victim must consent. As originally enacted, s. 20 did not permit the continuous combined duration of dispositions to exceed three years. Thus, a

young person who re-offended while serving a disposition could only receive a disposition that would return the aggregate to three years. Bill C-106 amended s. 20 to allow for dispositions for new offences to be consecutive to a disposition already being served. Finally, no disposition can result in punishment that is greater than the maximum punishment for an adult for the same offence.

Parole, as such, is not available for young persons. In its place, however, are detailed provisions for review of dispositions by the youth court. Every custodial disposition of more than one year is automatically reviewed annually. Further, either the Attorney General or the youth may apply for review after six months, and the provincial director for probation can also recommend release and direct the issue to the court. Provision is made for review of custody by provincially constituted review boards, who act in lieu of youth courts. On a review of custody the court or the board may confirm the disposition; reduce secure to open custody; or release the young person on probation. The Act also provides for a similar review of non-custodial dispositions (only by a youth court), and, as with custody reviews, such a review cannot result in the imposition of a more onerous disposition.

The Act originally contained a somewhat cumbersome procedure for dealing with youths who wilfully failed or refused to comply with the terms of a disposition. Under s. 33 the youth would be apprehended, brought before the court, and if found to have failed to abide by a disposition, made subject to new dispositions which could be more severe than the original. However, provisions of the Act did impose some restrictions on new dispositions after a s. 33 review. For example, unless the youth had committed a serious offence, he or she could not be incarcerated for consistent and numerous probation violations. Bill C-106 repealed s. 33, and introduced a new offence of wilful failure or refusal to comply with a disposition (s. 26). Thus, such activity can now be treated as a new offence, with fewer restrictions on dispositions.

The sentencing provisions of the YOA are considerably more detailed than those of the JDA, and place strict limits on the youth courts, in contrast to the wide discretion given juvenile courts under the old Act. The YOA also provides for a wider range of sanctions. It was, however, the object of criticisms, some of which were dealt with by the amendments in Bill C-106. It also has been said that the limits on secure custody are too low. A youth who commits a very

serious offence, such as murder, can face a maximum sentence of only three years, regardless of the number of separate offences. The only alternative to what many consider to be an unreasonably low maximum sentence is transfer to adult court, where the sentences are much more severe. In addition, the veto given to a youth over an order of medical or other treatment has been criticized. Some contend that involuntary treatment is not inherently bad.

H. Appeals

The JDA allowed for appeals from decisions of juvenile courts, with leave, only where the court considered it to be "essential in the public interest, or for the due administration of justice." In contrast, a youth court decision may be appealed as of right under the YOA, with respect either to a conviction or acquittal, or, with respect to a disposition, either to a provincial supreme court or court of appeal (depending on the province). An appeal of a disposition is to be distinguished from a review; an appeal questions the propriety of the original disposition, while a review brings into question its continued usefulness.

I. The Rights of Young Persons

1. The Right to Counsel

Under the JDA, because informality was a primary aim, young persons were often not represented by counsel. Even if present, counsel did not always play a distinct role as the youth's advocate. The YOA made a fundamental change in this area. Pursuant to s. 11, a young person has the right "to retain and instruct counsel without delay ... at any stage of proceedings against him," including formal determinations as to the use of alternative measures. Obligations are imposed on all those who arrest or detain young persons to inform them of the right to counsel and to give them an opportunity to obtain counsel. Youth courts are also obliged to advise an unrepresented youth of that right; and where the person indicates a wish to be represented, the court must facilitate recourse to any legal aid program or, where none is available, the court must direct that the youth be represented. A young person also has the right to be assisted by an adult who is not a lawyer, on request and with the court's consent; and to have counsel independent of

his or her parents, where their interests may conflict. The clear intent of the Act is that young persons should have recourse to legal assistance at all stages of proceedings, and that counsel should have a full advocate's role. In Bill C-106 an amendment was made to s. 11 to stipulate that a young person's right to counsel includes the right "to exercise that right personally." This change was intended to deal with certain appellate decisions which held that a person who is not an adult can instruct counsel only through the agency of his or her parent or guardian. Bill C-37 in 1995 amended section 11 to make it clear that young offenders have a right to counsel at hearings where their level of custody is reviewed.

2. The Right to Privacy

A "right to privacy," in this context, has reference to the generally acknowledged principle that criminal proceedings against young persons should not, in all circumstances, be open to the public; and that the identity of an accused or convicted youth (as well as information from which that identity can be deduced) should not be publicly revealed. This recognition of the "privacy" of young offenders derives from the view that youth are entitled to special consideration in this regard, that they should not be "labelled" or made to bear a stigma for acts they carried out at an immature age.

Under the JDA, all juvenile court proceedings had to be held *in camera*. This requirement was held by the Ontario Court of Appeal to be in contravention of the Charter's guarantees of freedom of expression and freedom of the press. The same court has, however, upheld the constitutional validity of s. 39 of the YOA which allows for *in camera* proceedings in specific circumstances - where the proceedings may be seriously "injurious" or "prejudicial" to a young person or child involved; or where exclusion of the public is in the interest of "public morals, the maintenance of order or the proper administration of justice." That court has also upheld the validity of s. 38 which prohibits the publication of any report as to an offence committed (or alleged to have been committed) by a young person, or as to a hearing, disposition or appeal under the Act concerning a young person, in which the name of the young person, or of a child or young person aggrieved or who appeared as a witness is disclosed. The publication of information that serves to identify such persons is also prohibited. Contravention of these prohibitions can

result in prosecution. Thus the public, and the press, may attend and report on youth court proceedings, except where the court makes a specific order under s. 39. The name of, or information which identifies, any child or young person involved in such proceedings may not be made public, however.

The all-embracing nature of these prohibitions has been criticized. In Bill C-106, s. 38 was amended to allow for some limited exceptions:

1) disclosure of information in the course of administration of justice, where "it is not the purpose of the disclosure to make the information known in the community";
2) disclosure of information serving to identify a young person who has committed an indictable offence and is considered dangerous, where that disclosure is necessary to assist in apprehension, and
3) disclosure at the behest of the young person in issue if it would "not be contrary to the best interests of that person."

The Government resisted, however, submissions made by representatives of the press that the youth court should have a discretion to permit disclosure on the application of any person. Bill C-37 in 1995 made a number of changes to section 38 to allow access to information to persons involved in the care or supervision of young persons.

J. Records

Closely related to the protection of privacy of young persons is the manner in which records of investigations and proceedings are dealt with. Although youth are to be held accountable for their actions, the policy decision has been taken that access to records of youthful criminality should be restricted.

The JDA was silent on the matter of records. The YOA, as originally enacted, set out strict rules for the maintenance of records dealing with young persons by the court, the police and by the government. They were to be kept separate from adult records with access given only to a limited number of persons or organizations. Furthermore, they were to be destroyed, without exception, if the youth was acquitted or charges were otherwise withdrawn; and destruction would automatically take place on the expiration of fixed time periods after a conviction, depending on the

severity of the offence. A serious omission in this provision was revealed when it became clear that the Act required the destruction of the records of a youth "acquitted" by reason of insanity.

Bill C-106 thoroughly revised the record-keeping provisions of the YOA. The record-keeping and access sections were consolidated and simplified. New exceptions to the limitations on disclosure of records were added, including: to the victim of the offence to which the record relates; by the police if "necessary ... in the conduct of an investigation"; and to insurance companies for the purpose of investigating claims arising out of the offence. In addition, the rule of presumptive destruction of youth records was abolished. Only central repository records (i.e. police records) would have to be destroyed on acquittal, or at the expiration of fixed periods. Others maintaining records may keep them if they wish. The Act now restricts access to those records after the expiration of certain periods of time. Records of youths acquitted by reason of insanity are excepted from these restrictions.

K. Conclusion

There has been general acceptance of the YOA, and of the approach it takes to the treatment of young offenders, in the period since the Act came into force. To be sure, there were a number of criticisms of particular aspects of the Act, many of which appear to have had substance and were dealt with in Bill C-106. But the underlying philosophy and general approach of the Act have broad support.

This is not to say that there are no critics of the more fundamental elements of the Act. Some members of the judiciary, and some of those involved in the delivery of social services to young offenders, have been critical of the consequences of the adoption of the "justice" model of dealing with adolescent criminality. Their criticisms have to do with such things as the increased formality of youth court proceedings; the alleged deleterious effect that lawyers, seeking acquittals "at all costs," are having on the welfare of their clients; and the apparent diversion of scarce funds from social services, which can assist youth, to legal aid, which provides them with what critics view as the short term benefit of counsel. It remains to be seen whether these more fundamental objections will develop and attract support as the Act becomes more entrenched in Canada's legal and social environment in the next few years.

PARLIAMENTARY ACTION

A. Bill C-192 (1970-71)

This bill was the culmination of a decade of efforts at reform and was similar in many respects to the present Act. It was given first reading in the House of Commons on 16 November 1970, but did not proceed beyond second reading.

B. Bill C-61, The *Young Offenders Act*

Bill C-61 was given first reading in the House of Commons on 16 February 1981. It was referred to the Justice Committee after second reading in June 1981. That Committee did not report the bill until April 1982. On 17 May the bill was given third reading in the House, and shortly thereafter it was passed by the Senate. Royal Assent followed on 7 July 1982 and the Act (except those provisions dealing with the maximum age of young offenders) came into force on 2 April 1984.

C. Bill C-106

This bill was given first reading on 30 April 1986 in the House of Commons, and was passed and given Royal Assent on 27 June. It came into force on 1 September 1986, except for some provisions (dealing with records of young offenders) which came into force on 1 November. The bill made substantial amendments, but left the Act's basic principles and structure intact.

D. Bill C-12 (formerly Bill C-58)

Bill C-12 was introduced in the House of Commons on 29 May 1991 and deemed to be at report stage. Third reading in the Senate and Royal Assent were on 9 April 1992. This bill replaced Bill C-58 (first reading in the House of Commons 20 December 1989 and second reading 14 June 1990) which died on the Order Paper. Bill C-12 left the Act's basic principles and structure intact. It amended s. 16 of the Act so that, in making transfer decisions where the

principles of rehabilitation and public protection could not be reconciled, the Youth Court would find the latter principle to be paramount and order proceedings against the young person to go forward in ordinary court. Section 20 of the Act was amended to permit a Youth Court Judge to sentence a young offender found guilty of first or second degree murder to a disposition not to exceed five years less a day and made up of a custodial portion (not to exceed three years) and a conditional supervision portion. Sections 742-744 of the *Criminal Code* were amended so that a person under 18 years of age convicted in ordinary court of first or second degree murder would be subject to life imprisonment and would not be eligible for parole for between five and ten years. The length of time of ineligibility for parole would be determined by the sentencing judge after hearing any recommendation made by the jury in the case. The bill also contained a number of related and consequential amendments dealing with extending the custodial portions of dispositions and suspending or revoking the conditional supervision portions of dispositions.

E. Bill C-37

Bill C-37 was introduced in the House of Commons on 2 June 1994. After receiving third reading in the House on 28 February 1995, Bill C-37 was given third reading by the Senate on 21 June and received Royal Assent the next day. **It was proclaimed in force on 1 December 1995.** As the first part of a two-phase plan to renew the Act, the bill provided longer sentences for violent crimes while encouraging non-custodial dispositions for non-violent criminal acts. Phase two of this renewal process would be a comprehensive review of the Act by the Justice Committee.

Among the provisions proposed in the bill were: an increase in the maximum penalty in youth court for first and second degree murder to 10 years and 7 years respectively; automatic adult court proceedings against 16 and 17 year olds for certain violent offences unless the youth court orders to the contrary; the sharing of youth court records with school and other authorities; the requirement that youth court judges imposing custodial dispositions state why non-custodial sentences would not be appropriate; and the requirement that young persons subject an adult court-imposed life sentence for murder serve a 7-to-10 year period of ineligibility for parole instead of the present 5-to-10 year period.

CHRONOLOGY

1908 - The *Juvenile Delinquents Act* was adopted by Parliament.

1929 - A revised and consolidated Act was adopted.

6 February 1966 - The Minister of Justice tabled the Report of the Department of Justice Committee on Juvenile Delinquency.

16 November 1970 - Bill C-192, a proposed Young Offenders Act, was introduced in the House but it was allowed to die on the order paper after severe criticism in Parliament and elsewhere.

1975-1977 - Following the submission of a report from its Committee on Young Persons in Conflict with the Law, the Department of the Solicitor General undertook a national consultation process.

26 October 1979 - Legislative proposals to replace the Juvenile Delinquents Act were tabled in the House of Commons.

16 February 1981 - Bill C-61, a proposed Young Offenders Act, was given first reading in the House of Commons.

7 July 1982 - The *Young Offenders Act* received Royal Assent.

2 April 1984 - All of the Act except that provision concerning the maximum age of young offenders was proclaimed in force.

1 April 1985 - That part of the Act stipulating that all persons up to 18 are to be considered "young persons" was proclaimed in force.

February 1986 - The Special Senate Committee on Youth tabled its report.

12 February 1986 - The Ontario Court of Appeal, in *Southam Inc.* v. *The Queen*, upheld the constitutional validity of those provisions of the Act which forbid publicity of proceedings and allow for the exclusion of the public from youth court rooms.

30 April 1986 - Bill C-106, containing proposed amendments to the Act, was given first reading in the House.

27 June 1986 - Bill C-106, after consideration by both Houses of Parliament, was given Royal Assent.

1 September 1986 - Bill C-106 (except for provisions on records) was proclaimed in force.

29 October 1986 - Bill C-15 received first reading.

1 November 1986 - The records provisions contained in Bill C-106 were proclaimed in force.

30 June 1987 - Bill C-15, after consideration by both Houses of Parliament, was given Royal Assent.

17 March 1988 - The Ontario Court of Appeal in the case of *R.* v. *Sheldon S.* held that Ontario's failure to provide for alternative measures was a violation of s. 15 of the Charter of Rights (equality rights).

24 March 1988 - The Government of Ontario announced the implementation of "interim" alternative measures pending an appeal to the Supreme Court of Canada of the Ontario Court of Appeal decision in *R.* v. *Sheldon S.*

8 July 1988 - Judge Lynn King of Ontario Provincial Court ruled in *R.* v. *Gregory S.* and *R.* v. *Jeffrey Scott P.* that Ontario's interim alternative measures were a violation of s. 15 of the Charter of Rights (equality rights). The Attorney General appealed these decisions to the Ontario Court of Appeal.

29 December 1988 - The Ontario Court of Appeal ruled that the "interim" alternative measures adopted by the Government of Ontario in March 1988 were not a violation of s. 15 of the Charter of Rights (equality rights).

3 April 1989 - The Throne Speech indicated that amendments to the *Young Offenders Act* would be forthcoming.

12 April 1989 - Private Member's Bill C-229 received first reading. It would have amended the Young Offenders Act so that those over 14 years of age charged with murder would have been proceeded against in ordinary court and those convicted of *Criminal Code* offences for which the maximum penalty is life would have been subject under the Act to a maximum penalty of five years less a day.

13 April 1989 - The Minister of Justice told the House of Commons that he and his provincial and territorial colleagues were reviewing the provisions of

the *Young Offenders Act* dealing with transfers to ordinary court and dispositions for murder.

9 June 1989 - At their P.E.I. meeting, provincial and territorial Attorneys General put forward proposals for amending the *Young Offenders Act* to deal with murder, transfers to adult court and other issues. The Minister of Justice welcomed the proposals.

20 June 1989 - In response to a question put to him during consideration of estimates by the House of Commons Standing Committee on Justice and Solicitor General, the Minister of Justice indicated that, after conducting consultations on proposals for reform of the *Young Offenders Act* put forward by the provincial and territorial Attorneys General, he expected to propose amendments to Parliament in November 1989.

28 September 1989 - The Supreme Court of Canada, in the companion cases *S.H.M.* v. *R.* and *J.E.L.* v. *R.*, decided that, since s. 16 of the Act is not reserved to exceptional cases alone, the evidentiary burden on the party seeking a transfer of a case to ordinary court is not a heavy one.

20 December 1989 - Bill C-58 received first reading.

14 June 1990 - Bill C-58 received second reading and was referred to a Legislative Committee.

28 June 1990 - The Supreme Court of Canada in the case of *R.* v. *Sheldon S.* decided that the *Young Offenders Act* did not impose on Ontario an obligation to establish alternative measures programs.

10 December 1990 - The Legislative Committee on Bill C-58 tabled its Report, which contained amendments.

7 February 1991 - The Supreme Court of Canada, in reasons for judgment in a series of cases from Nova Scotia and Prince Edward Island, upheld a provision of the *Young Offenders Act* allowing provincial Lieutenant Governors-in-Council to appoint Supreme Court or Provincial Court judges as Judges of the Youth Court.

11 April 1991 - During her appearance before the House of Commons Standing Committee on Justice and Solicitor General on Main Estimates, the Minister of Justice indicated her intention to introduce further amendments to the *Young Offenders Act* to deal with custody and

review, evidentiary matters, and assessments and dispositions for youth with special needs.

29 May 1991 - Bill C-58, which died on the Order Paper at prorogation, was re-introduced in the new session as Bill C-12 and deemed to be at report stage.

25 November 1991 - Bill C-12 received third reading in the House of Commons.

9 April 1992 - Bill C-12 received third reading in the Senate and Royal Assent.

15 May 1992 - Bill C-12 was proclaimed in force.

3 September 1993 - The Minister of Justice released a consultation paper seeking comments on minimum age, maximum age, transfers to adult court, publication of names and sentencing under the YOA.

20 April 1994 - During consideration of Estimates, the Minister of Justice told the House of Commons Standing Committee on Justice and Legal Affairs that before the summer recess he would be introducing a bill to amend the *Young Offenders Act* and asking the Committee to conduct a broad-based review of the youth justice system.

12 May 1994 - The House of Commons conducted an Opposition Day debate of the *Young Offenders Act*.

2 June 1994 - Bill C-37 received first reading. The Minister of Justice announced that this bill was the first part of a two-phase process, the second part to consist of a comprehensive review of the Act by the House of Commons Justice Committee.

28 February 1995 - Bill C-37 received third reading in the House of Commons and was sent to the Senate, where it received first reading on 1 March.

21 June 1995 - Bill C-37 received third reading in the Senate and was given Royal Assent the next day.

1 December 1995 - Bill C-37 was proclaimed in force.

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